

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JING JING	:	CIVIL ACTION
	:	
	:	
v.	:	NO. 17-446
	:	
WEYLAND TECH, INC., <i>et al.</i>	:	
	:	

MEMORANDUM

KEARNEY, J.

June 15, 2017

Shareholders claiming a company violated Delaware securities registration and transfer statutes must plead the specific violation of the statute. A statute identifies the exact claim and, absent pleading of the claim, we cannot assume or infer facts based upon conclusions. When, as here, Plaintiff shareholder alleges a Delaware corporation failed to remove a restrictive legend on her stock certificate violative the Delaware Code, the shareholder must specifically plead she presented the certificate to the corporation or transfer agent. The shareholder admits she did not plead this element but asks we infer the presentment. We cannot fairly infer this required element of her claim. As the shareholder failed to specifically plead presenting her security necessary to impose a duty on the corporation to register the transfer of her stock, we must dismiss her Complaint without prejudice to be promptly amended to meet the statutory prerequisites so long as counsel can do so under Fed. R. Civ. P. 11.

I. Alleged facts.

In April 2016, Duan Jing Jing bought 800,000 shares of Delaware corporation Weyland Tech, Inc. (“Weyland”)¹ from Ms. Lee Gaik Hong.² Weyland issued stock Certificate Number 1397 to memorialize the purchase.³ The certificate included a restrictive legend preventing the shares from being sold.⁴ To sell the shares, Weyland must remove the restrictive legend.⁵ Weyland, through its CEO, said it would attempt to remove the restrictive legend and re-issue the shares as non-restricted after a mandatory holding period.⁶

In March 2017, Ms. Jing Jing sought to remove the restrictive legend.⁷ Ms. Jing Jing’s attorney, Matheau Stout, sent a Rule 144 opinion letter to the transfer agent, Nevada Agency and Transfer Company (“Transfer Company”).⁸ Attorney Stout provided the documents required under Rule 144 of the Securities Act of 1933.⁹

Weyland declined to remove the restrictive legend from the certificate.¹⁰ It cited a complaint from a foreign court (“the Singapore Complaint”) claiming the shares originally issued to Ms. Lee Gaik Hong had been canceled.¹¹ This cancellation in turn rendered Ms. Jing Jing’s ownership invalid, because she purchased her shares from Ms. Lee Gaik Hong.¹² If true, Attorney Stout agreed the removal of the restrictive legend would be improper.¹³ He offered to withdraw his request to have the legend removed if Weyland could support its allegations.¹⁴

Weyland did not provide documents to support the Singapore Complaint.¹⁵ Nor did Weyland oppose Attorney Stout’s Rule 144 opinion letter.¹⁶ Weyland did issue an 8-K,¹⁷ which mentioned the Singapore Complaint, but Ms. Jing Jing found the 8-K did not sufficiently support those claims.¹⁸ Despite Ms. Jing Jing’s multiple attempts, Weyland and the Transfer Company

refused to remove the restrictive legend.¹⁹

II. Analysis

Following a month of failed attempts to remove the restrictive legend, Ms. Jing Jing sued Weyland and the Transfer Company under §§ 8-401, 403, and 407 of the Delaware Code.²⁰ Section 8-401, which describes an issuer's duty to register the transfer of securities, applies to the removal of a restrictive legend because a removal is deemed a registered transfer.²¹ Section 8-407 extends the issuer's duty to transfer agents.²² Section 8-401(b) provides liability "if an issuer is under a duty to register a transfer" and either refuses or causes unreasonable delay.²³ Under § 8-403(b), if there is an adverse claim regarding the security (e.g. the Singapore Complaint), the issuer is allowed to refuse to register transfer for a reasonable period while it investigates the adverse claim, but this time period is not to exceed thirty days.²⁴

Ms. Jing Jing alleges Defendants violated § 8-401 by not removing the restrictive legend when they had a duty to do so. She argues Defendants cannot use the Singapore Complaint as a justification for refusal under § 8-403(b) because the period the statute provided to substantiate the adverse claim had expired.²⁵ Ms. Jing Jing also alleges Defendants caused tortious interference with business advantage by prohibiting her from selling her shares.²⁶ She alleges conversion because Defendants exercised improper control over her shares.²⁷ She seeks a mandatory injunction requiring Defendants to remove the restrictive legend.²⁸

Defendants move to dismiss for failure to state a claim.²⁹ They argue Ms. Jing Jing fails to allege she presented her security, and presenting the security is required to impose a duty on an issuer to register transfer.³⁰ Because she did not allege she presented her security, she cannot

considered in light of a defendant's privilege to ... protect his business interests in a fair and lawful manner.”⁵⁴

Ms. Jing Jing fails to allege tortious interference with prospective business advantage for two reasons. She alleges intent to sell her shares, but intent to sell does not rise to the level of a “reasonable probability of business opportunity.” She does not allege a potential purchaser or even that she *will* sell her shares.⁵⁵ Instead, she alleges only that she intends to sell her shares to unnamed third party purchasers.⁵⁶ Under *Iqbal*, Ms. Jing Jing must allege more than the “sheer possibility” of future business advantage.⁵⁷

Ms. Jing Jing also does not allege Defendants “intentionally interfered” with her business advantage. Intentional interference asks the question, “did the defendant *improperly* interfere with the plaintiff’s prospective business relations?”⁵⁸ Defendants have the right to “protect [their] business interest in a fair and lawful manner.”⁵⁹ Ms. Jing Jing’s allegations of intentional interference rely on Defendants’ alleged violations of §§ 8-401 and 407,⁶⁰ but Defendants did not violate the statute because under the pleaded facts they had no duty to remove the restrictive legend. We dismiss her claim for tortious interference with prospective business advantage.

C. Ms. Jing Jing does not state a claim for conversion.

Ms. Jing Jing also alleges conversion, claiming Defendants’ refusal to remove the restrictive legend constitutes an improper control over the shares because it denied her the right to resell them.⁶¹ Under Delaware law, conversion requires a “distinct act of dominion wrongfully exerted over the property of another, in denial of his right, or inconsistent with it.”⁶² Conversion may apply to securities.⁶³ Because conversion is a tort, it requires Defendants’ “intentional

wrongful act.”⁶⁴

Even if Defendants’ refusal to remove the restrictive legend can be construed as an act of dominion over Ms. Jing Jing’s shares, it is not a wrongful act because it did not violate §§ 8-401 and 407. Ms. Jing Jing alleges Defendants’ duty to remove the restrictive legend made their refusal to remove it improper. Such an act of dominion will only be conversion if it is done “without lawful justification.”⁶⁵ As found, Defendants did not have a duty to remove the restrictive legend. Because they had no duty to remove it, they were lawfully justified in refusing.

Ms. Jing Jing also alleges conversion because she is deprived of her right to sell the shares.⁶⁶ As long as the restrictive legend remains on the security, Ms. Jing Jing does not have a right to sell her shares. Her rights are only violated if the restrictive legend wrongfully remains. As found, Defendants did not improperly or wrongfully obstruct removal of the restrictive legend, and so they did not deprive her of a right to sell her shares. Without alleging Defendants’ wrongful or improper act of dominion, and without showing they deprived her of her right to sell, we dismiss Ms. Jing Jing’s claim for conversion.

D. Ms. Jing Jing is not entitled to an injunction.

Ms. Jing Jing seeks to compel Defendants to remove the restrictive legend, but granting a mandatory injunction based on her Complaint would be improper. To obtain preliminary equitable relief, Ms. Jing Jing must meet two requirements: she must “demonstrate that [she] can win on the merits ... and that [she] is more likely than not to suffer irreparable harm in the absence of preliminary relief.”⁶⁷ Having failed to state claims for violations of §§ 8-401 and 407,

tortious interference with prospective business advantage, or conversion, Ms. Jing Jing has not demonstrated she can win on the merits.

Although she alleges irreparable harm, her allegations are based on the possibility of falling stock prices in the future.⁶⁸ She does not allege prices have fallen, or even that they are likely to fall.⁶⁹ She claims her inability to sell her shares has caused irreparable harm, but the harm is not irreparable because she can sell her shares if she fulfills the requirements of § 8-401 to have the restrictive legend properly removed. Because Ms. Jing Jing does not meet the “threshold requirements” for preliminary equitable relief, her claim seeking a mandatory injunction is denied.⁷⁰

E. We allow Ms. Jing Jing to amend.

Ms. Jing Jing requests leave to amend her complaint if we grant Defendants’ motion to dismiss.⁷¹ She argues an amendment should be permitted because the case will not be unduly delayed, amendment will cure the issue, and Defendants will not be prejudiced.⁷² Under Federal Rules of Civil Procedure 15(a)(2), “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”⁷³ Our Court of Appeals has held leave to amend “must be granted ... unless it would be inequitable or futile.”⁷⁴ We grant her leave to amend her complaint if she can do so under Rule 11.

III. Conclusion

We grant Defendants’ motion to dismiss Ms. Jing Jing’s claims for violations of §§ 8-401 and 407, tortious interference with prospective business advantage, conversion, and mandatory

injunction compelling Defendants to remove the restrictive legend. We grant her leave to amend her complaint if she can do so under Rule 11.

¹ ECF Doc. No. 1, ¶ 12-13.

² *Id.* ¶ 13.

³ *Id.* ¶ 15.

⁴ *Id.* ¶ 17, 19.

⁵ *Id.* ¶ 45-46.

⁶ *Id.* ¶ 17.

⁷ *Id.* ¶ 18-19.

⁸ *Id.*

⁹ 17 C.F.R. § 230.144.

¹⁰ EFC Doc. No. 1, ¶ 20.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* ¶ 21.

¹⁴ *Id.*

¹⁵ *Id.* ¶ 22.

¹⁶ *Id.* ¶ 23.

¹⁷ “Form 8-K is the ‘current report’ companies must file with the [Securities and Exchange Commission] to announce major events that shareholders should know about. An 8-K is a form issued by [a Securities and Exchange Commission] company notifying investors of specific events.” U.S. Securities and Exchange Commission: Form 8-K, <https://www.sec.gov/fast-answers/answersform8khtm.html>.

¹⁸ EFC Doc. No. 1, ¶ 25.

¹⁹ *Id.* ¶ 24, 32.

²⁰ DEL. CODE ANN. tit. 6, §§ 8-401, 403, and 407.

²¹ See *Bender v. Memory Metals, Inc.*, 514 A.2d 1109, 1115 (Del. Ch. 1986).

²² “A person acting as ... transfer agent ... for an issuer in the registration of a transfer of its securities ... has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.” § 8-407.

²³ § 8-401(b).

²⁴ § 8-403(b).

²⁵ EFC Doc. No. 1, ¶ 39-41.

²⁶ *Id.* ¶ 46.

²⁷ *Id.* ¶ 51.

²⁸ *Id.* ¶ 62.

²⁹ “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Att. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim satisfies the plausibility standard when the facts alleged “allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Burtch v. Millberg Factors, Inc.*, 662 F.3d 212, 220-21 (3d Cir. 2011) (citing *Iqbal*, 556 U.S. at 678). While the plausibility standard is not “akin to a ‘probability requirement,’” there nevertheless must be more than a “sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). The Court of Appeals requires us to apply a three-step analysis under a 12(b)(6) motion: (1) “it must ‘tak[e] note of the elements [the] plaintiff must plead to state a claim;” (2) “it should identify allegations that, ‘because they are no more than conclusions, are not entitled to the assumption of truth;” and, (3) “[w]hen there are well-pleaded factual allegations, [the] court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief.” *Connelly v. Lane Construction Corp.*, 809 F.3d 780, 787 (3d Cir. 2016) (quoting *Iqbal*, 556 U.S. at 675, 679); see also *Burtch*, 662 F.3d at 221; *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011); *Santiago v. Warminster Township*, 629 F.3d 121, 130 (3d Cir. 2010).

³⁰ EFC Doc. No. 6, p. 5.

³¹ *Id.* at 1.

³² *Id.*

³³ EFC Doc. No. 16, p. 4.

³⁴ *Id.*

³⁵ EFC Doc. No. 1, ¶ 15.

³⁶ *See Bender*, 514 A.2d at 1115.

³⁷ *See 7 Hawkland UCC Series* 8-401:02, “Duty to Register Transfer.”

³⁸ *See Id.*

³⁹ *See Id.*

⁴⁰ *See Bender*, 514 A.2d at 1114 (emphasis added).

⁴¹ *Wanland v. C.E. Thompson Co.*, 380 N.E.2d 1012, 1014, (Ill. App. Ct. 1978).

⁴² *First Nat’l Bank in Dall. v. Dyes*, 638 S.W.2d 957, 958 (Tex. App. 1982).

⁴³ *Kolber v. Body Central Corp.*, 967 F. Supp.2d 1061, 1066 (D. Del. 2013).

⁴⁴ § 8-401 cmt. 1 specifies “[t]his section does not constitute a mandate that the issuer must establish that all preconditions are met before the issuer registers a transfer.”

⁴⁵ *See* § 8-401(b).

⁴⁶ EFC Doc. No. 16, p. 5.

⁴⁷ EFC Doc. No. 1, ¶ 36.

⁴⁸ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

⁴⁹ EFC Doc. No. 1, ¶ 29.

⁵⁰ *Ashcroft*, 556 U.S. at 678.

⁵¹ *Connelly v. Lane Construction Corp.*, 809 F.3d 780, 787 (3d Cir. 2016) (quoting *Iqbal*, 556 U.S. at 675, 679).

⁵² EFC Doc. No. 1, ¶ 46-49.

⁵³ *Beard Research v. Kates*, 8 A.3d 573, 607-08 (Del. Ch. 2010) (quoting *DeBonaventura v. Nationwide Mut. Ins. Co.*, 428 A.2d 1151, 1153 (Del. 1981)); *Kuroda v. SPJS Holdings, L.C.C.*, 971 A.2d 872, 886-87 (Del. Ch. 2009); *Lipson v. Anesthesia Services, P.A.*, 790 A.2d 1261, 1285 (Del. Super. Ct. 2001).

⁵⁴ *DeBonaventura*, 428 A.2d at 1153.

⁵⁵ ECF Doc. No. 1, ¶ 44.

⁵⁶ *Id.*

⁵⁷ *Iqbal*, 556 U.S. 662 at 678.

⁵⁸ *Lipson*, 790 A.2d at 1287 (emphasis in original).

⁵⁹ *DeBonaventura*, 428 A.2d at 1153.

⁶⁰ EFC Doc. No. 1, ¶ 46.

⁶¹ ECF Doc. No. 1 ¶ 51, 54.

⁶² *Kuroda v. SPJS Holdings, L.L.C.*, 971 A.2d 872, 889 (Del. Ch. 2009) (quoting *Drug, Inc. v. Hunt*, 168 A. 87, 93 (Del. 1933)).

⁶³ *See Arnold v. Society for Savings Bancorp, Inc.*, 678 A.2d 533, 536, (Del. 1996).

⁶⁴ *Petroplast Petrofisa Plasticos S.A. v. Ameron Intern. Corp.*, 4304-VCP, 2009 WL, at *9 (Del. Ch. Oct. 28, 2009).

⁶⁵ *Van Dyke v. Pennsylvania R. Co.*, 86 A.2d 346, 352 (Del. Super. Ct. 1952).

⁶⁶ EFC Doc. No. 1, ¶ 52.

⁶⁷ *Reilly v. City of Harrisburg*, No. 16-3722, 2017 WL 2272114, at *2 (3d Cir. May 25, 2017).

⁶⁸ EFC Doc. No. 1, ¶ 49.

⁶⁹ *Id.*

⁷⁰ *Reilly*, No. 16-3722, 2017 WL 2272114, at *4.

⁷¹ EFC Doc. No. 16, p. 5.

⁷² *Id.*

⁷³ Fed. R. Civ. P. 15(a)(2).

⁷⁴ *Grayson v. Mayview State Hosp.*, 293 F.3d 103 (3d Cir. 2002) (citing *Foman v. Davis*, 371 U.S. 178 (1962); *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997)).

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ORDER

AND NOW, this 15th day of June 2017, upon consideration of Defendants' Motion to Dismiss (ECF Doc. No. 6), Plaintiff's Opposition (ECF Doc. No. 16) and for reasons in the accompanying Memorandum, it is **ORDERED** Defendants' Motion (ECF Doc. No. 6) is **GRANTED without prejudice** to Plaintiff filing an amended complaint consistent with our Memorandum no later than **June 23, 2017**.



KEARNEY, J.